

MOBILE BAYKEEPER, INC.,)
)
Plaintiff,)
)
v.)
)
ALABAMA POWER COMPANY,)
)
Defendant.)
)

Case No.: 1:22-cv-00382-KD-B

Plaintiff Mobile Baykeeper (“Baykeeper”) hereby notifies the Court of new authority pertinent to its pending Motion to Reconsider (“Motion”). Doc. 111. On June 7, 2024, the U.S. Environmental Protection Agency (“EPA”) issued a Federal Register notice entitled “Alabama: Denial of State Coal Combustion Residuals Permit Program” (“Denial”) (attached as Exhibit 1).¹ 89 Fed. Reg. 48,774 (June 7, 2024). The Denial is submitted as additional authority after briefing because it was released approximately four months after the filing of Baykeeper’s Motion on February 1, 2024.

EPA denied Alabama’s application to operate a Coal Combustion Residuals (“CCR”) permit program because the four permits issued by the State which it analyzed, like the Plant Barry permit, are less protective than the federal CCR regulations require. Ex. 1 at 48,774; *see also*

¹ Pursuant to Civil Local Rule 7(f)(3), parties may notify the Court of pertinent and significant authority which comes to a party's notice after briefs have been filed, but before decision has been rendered. The Rule requires the noticing party to advise the Court why the authority was not cited in the party's brief, and to cite the page(s) of the brief(s) already filed which relate to the additional authority.

Proposed Denial, Doc. 84-1 at 41, n.17 (“[T]he permit and record for Plant Barry share many of the flaws in the CCR permits for other unlined surface impoundments in Alabama.”). EPA’s detailed analysis confirmed its preliminary conclusion that Alabama’s state permits for the closure of coal ash impoundments state-wide do not comply with federal standards and evidence a pattern of deficiencies; specifically, that the permits allow for closure of impoundments with ash placed in unlined pits “without requiring measures to prevent groundwater from flowing into and out of the closed unit indefinitely.” Ex. 1 at 48,779. EPA also reiterated that the CCR Rule is “self-implementing, which means that the CCR landfills and surface impoundments *must comply with the terms of the rule even prior* to obtaining a Federal permit or permit issued by an approved State, and noncompliance with any requirement of the Federal CCR regulations can be directly enforced against the facility.” *Id.* at 48,777 (emphasis added) (citing 42 U.S.C. § 6945(d)(3)).

The Denial follows the Proposed Denial issued in 2023, resolves a “contingency” discussed by the Court as part of its ripeness analysis, Doc. 108 at 34-39, and provides additional authority in support of the ripeness arguments made in Baykeeper’s pending Motion to Reconsider, Doc. 111 at 18-29.

Respectfully submitted this 8th day of July 2024.

s/ Barry A. Brock
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One of the Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that, on July 8, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of the filing to all counsel of record.

s/ Barry A. Brock

Barry A. Brock

One of the Attorneys for Plaintiffs